

1 **MINUTES OF THE COTTONWOOD HEIGHTS CITY**
2 **PLANNING COMMISSION MEETING**

3
4 **Wednesday, October 5, 2016**

5 **6:00 p.m.**

6 **Cottonwood Heights City Council Chambers**

7 **2277 East Bengal Boulevard**

8 **Cottonwood Heights, Utah**
9

10 ***ATTENDANCE***

11
12 Members Present: Chair Paxton Guymon, Craig Bevan, Allen Orr, Sue Ryser, Joseph Demma,
13 Graig Griffin

14
15 Staff Present: Community Development Director-Brian Berndt, Community/Economic
16 Development Planner-Michael Johnson, City Attorney-Shane Topham,
17 City Recorder-Paula Melgar
18

19 **WORK SESSION**

20
21 **1.0 Review Business Meeting Agenda.**
22

23 Community Development Director, Brian Berndt, introduced the individual agenda items. He
24 reported that the request from Joe Salisbury was to subdivide Lot 7 of the Little Willow
25 Subdivision. The public hearing was held in June of 2013. He recommended that the applicant,
26 Mr. Salisbury report on the reasons for the delay and then determine how to proceed.
27 Commissioner Ryser questioned whether the matter could be opened to a public hearing again due
28 the length of time that has elapsed.
29

30 Mr. Salisbury reported that the matter was heard by the Planning Commission about three years
31 earlier. He noted that there were substantial issues with the site that took him time to work through.
32 He has worked tirelessly with the neighbors who are all aware of the project and has also worked
33 diligently to resolve all of their concerns. Previously, staff recommended that he work through all
34 of the outstanding items before coming back. He has had all of the engineering done and all issues
35 have been resolved. Community and Economic Development Planner, Michael Johnson, stated
36 that Mr. Gibson has reviewed the project for drainage issues and indicated that there may be some
37 technical labeling to correct but all of the engineering, grading, and drainage was complete. He
38 was satisfied that they easements had been obtained as well. Chair Guymon recalled that that was
39 the main issue three years ago.
40

41 Mr. Salisbury preferred not to open the matter up to public hearing again considering the time and
42 money he has spent. He hoped to get asphalt in this year and stated that any delay will push him
43 into next year. Commissioner Ryser commented that a lot can change in a neighborhood in three
44 years and she wanted to make sure that the neighbors are informed about what is planned.
45

1 Mr. Johnson commented that generally, minor subdivisions under 10 lots that are not part of an
2 approved plat already are approved at an administrative level. This project, however, happens to
3 be part of a subdivision even though it consists of only two lots. Mr. Salisbury added that every
4 neighbor that abuts the property is satisfied and has signed easements. Commissioner Orr asked
5 that verification of that be provided in writing. The need to require verification was discussed.
6 Commissioner Griffin was not comfortable requiring verification if it is not a Code-based
7 requirement since it would empower the neighbors to make demands they are not entitled to make.
8 He pointed out that this is a one-lot subdivision, the zoning is already in place, and it is consistent
9 with the neighborhood.

10
11 Sue Ryser commented that as a neighbor she would want to be notified of what is proposed.
12 Mr. Salisbury stated that he has detailed documentation of what has been done in terms of crossing
13 each item off of the list. Mr. Johnson stated that staff has done a typical plan review as is done
14 with every subdivision. Each has either been approved or is very close to it. With regard to the
15 easement issue, Mr. Johnson stated that it can become a condition of approval. If the applicant
16 needs an easement to access the lots, it will be a requirement. Mr. Salisbury stated that the zoning
17 allows him to turn it into three lots. To be consistent with the neighborhood, they have made a
18 great effort to hear the concerns of the neighbors and only do two lots.

19
20 In response to a question raised, Mr. Johnson stated that the project is in conformance. What is
21 proposed are two flag lots. The Code allows two flag lots to be accessed from the same road.
22 There are standards for the right-of-way width and minimum lot sizes. The applicant will also
23 have to meet the setback and engineering requirements when the site is constructed.

24
25 With regard to the second action item on the agenda, Mr. Berndt stated that staff has not received
26 any comments since the public hearing.

27 28 **2.0 Discussion Items.**

29
30 Community Development Director, Brian Berndt, reported that because of difficulties with some
31 applications and how staff creates the files, there is sometimes confusion for the public. As a
32 result, a member of the public has been asked to help review some applications so that they can
33 give feedback, make sure they are addressing and answering questions, and make sure they are not
34 using terminology that people don't understand. Woody Noxon has volunteered to serve in this
35 capacity and work with staff on applications.

36
37 Mr. Noxon thanked the Commission for the opportunity and wished to discuss the building process
38 and make recommendations. The intent is to have a discussion about things that have occurred
39 and ways to move forward from a citizen's perspective. Mr. Noxon stated that the objective is for
40 the City to have a building process that is clear, easily understood by all, and well documented.
41 He noted that documentation needs to be specific and precise. He reported on discussions that
42 took place at previous Planning Commission Meetings and reviewed the process to determine what
43 was said compared to what was done.

44
45 Mr. Noxon reported that at the November 20, 2014 ARC Meeting, the residents of Racquet Club
46 Drive and Circle expressed concerns with the David Weekly project with respect to height, density,

1 and proximity. The developer stated that the rooftop deck/garden will have no living area and no
2 heat and the only structure will be a stair enclosure. Mr. Noxon stated that the intent was to follow
3 the theme of the proposed office building and hotel. The top of the hotel and office building also
4 were to have open areas and gardens. The minutes of the meeting did not reflect or include any of
5 those statements. Staff was present at the meeting but did not bring the verbal information forward
6 at the next Planning Commission Meeting. At the Planning Commission Meeting held on
7 December 3, the residents spoke in support of the residential component and whether there could
8 be a transition from the residential community to the center. The approved minutes stated that the
9 third story being requested included an enclosed patio and stairway leading to a rooftop deck. All
10 of the concepts shown at the meeting had a lattice rooftop and an enclosed stairway. All stairway
11 enclosures shown on sketches reflected a 100 square-foot area. The developer presented a site
12 map that included the proposed 17 buildings and the square footage of each floor of each building
13 including 100 square-foot stair enclosures where appropriate, foundation heights for each building,
14 and the height of each building. The approved minutes did not include the site map, building
15 sketches, or any pertinent verbal information presented. As a result, he did not consider it to be a
16 binding site plan.

17
18 Mr. Noxon reported that at the January 7, 2015 Planning Commission Meeting, staff presented an
19 executive summary of the December 3 meeting. The Planning Commission voted to approve the
20 request for conditional use approval of the Canyon Center Phase 2 site plan for a 10.85-acre mixed
21 use. None of the public comments or recommended changes were included. The site map
22 presented by the developer that represented the square footage of each floor and the ground height
23 to building height of the 17 buildings was not included or referenced in the minutes. The Planning
24 Commission approved a third floor without restrictions.

25
26 On September 25th the Planning Commission rejected a building permit requesting approximately
27 900 square feet of enclosed space on the top floor. On January 12 a citizen letter stated that the
28 requested permit for Lot 1 “does not fit within the approved site plan or the development and
29 should be rejected.” The developer also presented the concept of rooftop garden decks at the
30 Canyon Center but never discussed people inhabiting the rooftop areas. Staff also stated that the
31 site plan as far as building size and the floor square footage was not binding but all of the heights
32 on the site plan were to be strictly adhered to throughout the process. It did not make sense to Mr.
33 Noxon why a portion of the site plan was relevant and another was not. Two days later the permit
34 was approved for approximately 600 square feet of living on the top floor. This contradicted the
35 Planning Department’s statement and rejection letter of the first attempt. Currently, 12 buildings
36 have been completed or under construction, four building permits are in process, and one has yet
37 to be submitted.

38
39 Mr. Noxon stated that if the situation is examined from what was said versus what was done
40 perspective, in November at the ARC Meeting it was specified that there would be no living area
41 on the top and only a stairway enclosure. The minutes, however, did not reflect that. On December
42 3, a lattice-type rooftop deck was proposed along with an enclosed stairway. The minutes referred
43 to an enclosed patio and stairway. Mr. Noxon commented that citizens do not typically read the
44 minutes. In January, the site map showed an enclosed 100-square foot stairway labeled as the roof.
45 The minutes make reference to the site map, the square footage, and the building heights. There
46 are now three stories of up to 600 square feet in size and the two-story buildings are higher than

1 specified on the site map. In the end, the citizens did not get what they expected after attending
2 all of the meetings and participating in the process.

3
4 Possible approaches were discussed. Mr. Noxon stated that the City must define information,
5 statements, and commitments to be included in all planning process approved minutes. He
6 recommended that the Planning Commission specify what should be in the minutes. Mr. Noxon
7 described previous boards he has served on and stressed the importance of being provided with
8 accurate information. He commented that the Certificate of Design must be a living document that
9 plays a meaningful role in the process and is adhered to. Mr. Noxon opined that the Planning
10 Commission must ensure that their decisions are in complete compliance with the ARC. The
11 Planning Department should be present at all meetings and they need to be accountable to
12 consistently document and convey verbal statements and the intent throughout the process. He
13 urged the Commission to drive by the project and see the final product. The homes are three feet
14 apart and there is no room to park a car in the driveway. Mr. Noxon stated that at the last meeting
15 there was discussion about whether the Planning Commission should wait before making a
16 decision in order to reflect on the public comment. He considered that to be the right thing to do.

17
18 (11:21:36) Mr. Noxon was asked to comment on other things he does not like about the project
19 other than the fact that the developer did not do what he said he was going to. Mr. Noxon was
20 concerned about 15 to 20 years from now and how the corner will reflect on the City as a whole
21 and the entire Canyon Center. He also considered the situation to present a view shed issue.

22
23 Commissioner Ryser understood Mr. Noxon's concerns since she and Perry Bolyard worked with
24 Sandy City on a similar project where what they were told and what they saw later were not the
25 same. As a citizen, she agreed that that is very frustrating. Mr. Noxon was of the belief that if the
26 site map had been referenced in the minutes any significant variation would have to come back to
27 the Planning Commission. He commented that Cottonwood Heights is in a unique location and
28 those who have made investments should be encouraged to encourage others to invest because
29 they will be protected as well.

30
31 (11:27:38) Commissioner Orr commented that in this particular situation, the total height would
32 not have changed. Commissioner Griffin responded that the opaque portion of it would.
33 Commissioner Orr commented that the representation was that there was going to be a third story
34 but it was going to have a lattice roof. There was height represented with that. What happened
35 was the top story was enclosed. He wanted to understand whether the total height changed and
36 how enclosing it affected the situation. Mr. Noxon stated that the profile of the home behind him
37 increased by 2 ½ feet. The Planning Commission did not grant a third story for the homes along
38 their backyards, which was good. The representatives from David Weekly Homes were smart and
39 realized that the zoning specifies that any two-story home can be 35 feet tall. The height of stories
40 is not defined in the zoning. As long as they are within 35 feet, they felt like they could change
41 anything. If the minutes had specified what was approved they would have had to come back to
42 the Planning Commission. Mr. Berndt stated that with the changes the project was still within the
43 guidelines because it was a roof rather than a stairwell. Mr. Noxon commented that those who are
44 most affected are not present and the situation has had a significant impact on their properties.

1 Commissioner Ryser remarked that she was not on the Commission when the matter was heard.
2 She met with Mr. Johnson and discussed it and found that all of the changes were within the Code,
3 which was why it did not come back. She, however, understood the concerns raised.
4

5 **BUSINESS MEETING**

7 **1.0 WELCOME/ACKNOWLEDGEMENTS**

8
9 Chairman Paxton Guymon called to the meeting to order at 6:00 p.m.
10

11 **2.0 CITIZEN COMMENTS**

12
13 There were no citizen comments.
14

15 **3.0 PUBLIC HEARINGS**

17 **3.1 (Project #HOC-16-004) Public Comment on a Request from Angela Lancaster for** 18 **Conditional Use Approval to Operate a Home Daycare at 1761 East Cloverdale Road.** 19

20 (11:47:56) Mr. Johnson updated the Commission on the project and reported that the property is
21 in the R-1-8 zone. The application is for a home day care/preschool to allow up to 12 children per
22 session. The last time the matter was discussed, the hearing was continued to address some of the
23 nuisances on the site. Staff found them to be an issue to health, visibility, and general safety and
24 asked the applicant to work toward resolving the nuisances and continued action. The City's Code
25 Enforcement Officer visited the site earlier in the day and found that progress had been made on
26 the site. If the Commission feels that enough progress has been made to show that the applicant
27 is making an effort to clean up the site, conditions of approval could perhaps be included to specify
28 that nuisances must be addressed before the license is issued. Another option would be to continue
29 the hearing further. No action was scheduled on the matter.
30

31 Procedural issues were discussed. Chair Guymon recommended the public hearing be conducted
32 tonight and the matter scheduled for action at the next meeting. He hoped that between now and
33 then a determination could be made as to whether there are still existing nuisances that need to be
34 remedied. It was noted that there are still issues on the site. There is also a yellow fence and a
35 commercial dumpster on the property, which is not allowed in the zone. Although progress has
36 been made, there are still several issues to be addressed.
37

38 Commissioner Ryser asked at what point a daycare has to be state licensed. Mr. Johnson stated
39 that the applicant currently has a license with the state and is operating a daycare with six or fewer
40 children, which is exempt from the home occupation requirements. The applicant will need a new
41 business license based on the expansion that will go to the Health Department for review before a
42 business license is issued.
43

44 (11:53:11) Chair Guymon opened the public hearing.
45

1 Paul Amon gave his address as 1750 East Meadow Downs Way and stated that he has owned a
2 home in the neighborhood for 30 years. He drove by the home earlier in the day and observed a
3 minivan in the driveway. He questioned whether anyone lives in the home. The property is owned
4 by the Kingston family and it is apparent that it is not a fit environment for children. The dumpster
5 is in violation of the Code and is a Kingston-owned company dumpster. He commented that there
6 is always a dumpster on the property. He complained to the State earlier in the day about the fact
7 that he did not believe there should even be six children allowed on the site. He also observed the
8 home being treated with pesticides with the woman and children inside. Based on the condition
9 of the exterior of the home, he questioned the situation inside. Other issues on the site were
10 described.

11
12 Mr. Amon did not believe anyone lives in the home because there are no lights on at night. He felt
13 that it was a front for the Kingstons to bring in more money for their business. If they have a
14 license for 12 children, they can obtain funding for 12 children that can be shared amongst the
15 group and distributed how the leaders decide. A question was raised as to whether the property
16 was ever in a good to average state of repair. Mr. Amon responded that at one time a man lived in
17 the home who maintained it very well. He estimated that he has been to the site at least 36 times
18 in the last two years and at no time did the home appear to be occupied as a residence.

19
20 (12:00:28) There were no further public comments. The public hearing was closed.

21
22 Commissioner Orr asked staff if there was a way to prove that the home is being used as a
23 residence. Mr. Johnson stated that they could ask for a copy of a lease agreement. City Attorney,
24 Shane Topham, indicated that if it is a home occupation and no one is living there it is in violation
25 of the definition. In that case, the day care use becomes the primary use, which is conducting a
26 business in a residential area. He explained that the daycare use has to be clearly subordinate to
27 the use as a residence.

28
29 It was the consensus of the Commission to take action on the matter at the next meeting.

30
31 **3.2 (Project #GPA-16-002) Public Comment on a City-Initiated Proposal to Adopt a Fort**
32 **Union Area Master Plan as an Addendum to the Cottonwood Heights General Plan.**

33
34 (11:03:09) Mr. Berndt reported that no comments had been received since the last time the matter
35 was discussed at which time they reviewed the entire document. No comments had been received
36 since the last meeting. It was noted that the document has been posted on the City's website since
37 January.

38
39 The public hearing was continued from the last meeting. There were no public comments. Chair
40 Guymon closed the public hearing.

41
42 **4.0 ACTION ITEMS**

43
44 **4.1 Project #SD 13-002) Action on a Request from Joe Salisbury to Subdivide Lot 7 of the**
45 **Little Willow Subdivision and to Amend the Little Willow Subdivision Plat. The**
46 **Subdivision is Located at 8562 South Little Willow Circle, Cottonwood Heights, Utah.**

1
2 (11:04:55) Mr. Berndt reported that all issues pertaining to the above matter had been resolved and
3 was ready for a decision. Staff recommended approval of the request. Access was identified as
4 one of the major issues. When the applicants apply for the building permit, the on-site retention
5 and drainage issues have to be resolved. It appeared that all standards would be met.
6

7 Commissioner Ryser questioned the fact that three years have elapsed since the project was
8 approved and why the applicant is now rushing for approval. She was uncomfortable not making
9 the neighbors aware of what is happening. Commissioner Griffin commented that the Code does
10 not specify a timeframe and he did not think the Commission should be rewriting the Code.
11 Mr. Berndt stated that codes can change at which point they are out of compliance and have to go
12 back through the process. So far, there have not been any changes to the engineering requirements.
13

14 Noticing issues were discussed. Commissioner Orr questioned whether there was a way to
15 accommodate for a gap period. Mr. Topham thought it would be best to change the Code to
16 provide for time periods rather than to begin imposing additional requirements after the fact based
17 on subjective feelings. Commissioner Orr asked if there was a way to let the neighbors know that
18 this is taking place.
19

20 City Recorder, Paula Melgar, reported that the agenda was published and is posted on the City's
21 website and elsewhere. She stated that the City does its due diligence to notify the public.
22 Commissioner Orr wanted to be aware of citizens who might want to comment. He recommended
23 there be some sort of verification of the applicant's claim that he worked with the neighbors to
24 resolve their issues.
25

26 (11:16:45) *Commissioner Demma moved to approve SD-13-002, Application for Subdivision*
27 *Amendment for the Little Willow Subdivision subdividing Lot 7 into two lots located at 8562*
28 *Little Willow Circle subject to the following:*
29

30 ***Findings:***
31

- 32 1. *The public nor any person will be materially injured by the Little Willow Subdivision*
33 *Amendment.*
- 34
- 35 2. *The application meets all portions of Chapter 12.26 and R-1-8 ordinances.*
36
- 37 3. *There is good cause for the proposed subdivision amendment.*
38

39 ***Conditions:***
40

- 41 1. *The applicant shall work with staff on all technical corrections to the recording*
42 *document(s).*
- 43
- 44 2. *Including all items of the staff report.*
45

46 *Commissioner Griffin seconded the motion.*

Commissioner asked if the motion addresses the easement issue. Mr. Berndt stated that is part of the permitting process. A permit will not be issued if the easement is not in place. In addition, the final plat will come back to the Commission Chair for a final signature so it can be verified at that time.

Vote on motion: Sue Ryser-Nay, Allen Orr-Nay, Craig Bevan-Aye, Craig Griffin-Aye, Joseph Demma-Aye, Chair Paxton Guymon-Aye. The motion passed 4-to-2.

4.2 (Project #SPL-16-001) Action on a Request from the City of Cottonwood Heights for Site Plan Approval of a Proposed Public Works Salt Storage Structure at 6579 South 3000 East, Cottonwood Heights, Utah.

(11:19:00) Mr. Berndt reported that nothing had been received since the last meeting. The site plan was displayed for the Commissioners' review. Commissioner Ryser commented that for a salt storage structure it was about as aesthetically pleasing as it could be. Commissioner Orr asked if there were comments made at the public hearing that were incorporated into the document. Mr. Berndt commented that the landscaping plan shows where the landscaping will be along 3000 East. The access road will not be owned by the City so they will not have control over the north and east portions of the site. The City will landscape the where areas they have frontage. It was noted that Rocky Mountain Power owns the south one-third of the site, UDOT still maintains the middle, and the City owns the north one-third.

Commissioner Bevan moved to approve project SPL-16-001, a request from the City of Cottonwood Heights for site plan approval of a proposed Public Works Salt Storage Structure at 6579 South 3000 East, Cottonwood Heights. Commissioner Orr seconded the motion. Vote on motion: Sue Ryser-Aye, Allen Orr-Aye, Craig Bevan-Aye, Craig Griffin-Aye, Joseph Demma-Aye, Chair Paxton Guymon-Aye. The motion passed unanimously.

4.3 Approval of Minutes of July 20, 2016 and September 14, 2016.

(11:23:00) *Commissioner Orr moved to approve the minutes of July 20, 2016 Planning Commission Business Meeting. Commissioner Bevan seconded the motion. The motion passed with the unanimous consent of the Commission, which included at least four members present at the July 20, 2016 meeting.*

(11:25:20) *Commissioner Orr moved to approve the minutes of September 14, 2016. Commissioner Griffin seconded the motion. The motion passed with the unanimous consent of the Commission with one abstention. Chair Guymon abstained from the vote as he was not present at the September 14, 2016, meeting. At least four members of the Commission who were present at the September 14 meeting participated in the vote.*

5.0 ADJOURNMENT

The Planning Commission Meeting adjourned at approximately 6:40 p.m.

1 *I hereby certify that the foregoing represents a true, accurate and complete record of the Cottonwood*
2 *Heights City Planning Commission Meeting held Wednesday, October 5, 2016.*

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6 
7
8 _____

9
10 Teri Forbes
11 T Forbes Group
12 Minutes Secretary

13
14 Minutes approved: *November 2, 2016*